

Supreme Court, U.S.  
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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1978

No. **78-267**

THE PEOPLE OF THE STATE OF MICHIGAN,  
Petitioner,  
vs.

MATTIE B. JAMES AND CHARLES H. STEELE,  
Respondents.

PETITION FOR A WRIT OF CERTIORARI  
TO THE COURT OF APPEALS OF  
THE STATE OF MICHIGAN

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WILLIAM L. CAHALAN  
Prosecuting Attorney  
Wayne County  
State of Michigan

EDWARD REILLY WILSON  
Chief Appellate Attorney

CRAIG L. JOHN (P-27146)  
Assistant Prosecuting Attorney  
12th Floor, 1441 St. Antoine  
Detroit, Michigan 48226  
Phone: (313) 224-5760

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THE PEOPLE OF THE STATE OF MICHIGAN,  
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MATTIE B. JAMES AND CHARLES H. STEELE,  
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PETITION FOR A WRIT OF CERTIORARI  
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Now Comes William L. Cahalan, Prosecuting Attorney in and for the County of Wayne, State of Michigan, by Edward R. Wilson, Chief Appellate Attorney, and Craig L. John, Assistant Prosecuting Attorney, and prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of Michigan, entered in the above entitled cause on February 1, 1978, leave to appeal denied by the Michigan Supreme Court on May 4, 1978.

## OPINIONS BELOW

The opinion of the Michigan Court of Appeals is unreported, and is appended as Appendix "A". The order of the Michigan Supreme Court denying Petitioner's application for leave to appeal the decision of the Michigan Court of Appeals is appended as Appendix "B".

## STATEMENT OF JURISDICTION

The judgment of the Michigan Court of Appeals was entered on February 1, 1978. The Michigan Supreme Court denied Petitioner's application for leave to appeal on May 4, 1978. The jurisdiction of this Court is invoked under 28 USC § 1257(3).

## QUESTION PRESENTED

Does Simmons v United States, 390 US 377; 88 S Ct 967; 19 L Ed 2d 1247 (1968) make the Jones v United States, 362 US 257; 80 S Ct 725; 4 L Ed 2d 697 (1960) "automatic standing" rule regarding suppression of evidence where possession at the time of the search is an essential element of the offense obsolete so that Jones v United States, *supra*, should be overruled?

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in pertinent part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF FACTS

Mattie B. James and Charles H. Steele were arrested and charged with possession of heroin with intent to deliver contrary to MCLA 335.34(1)(a); MSA 18.1070(21)(1)(a) (R 4). A preliminary examination was held and the defendants were bound over for trial. Subsequently, they filed a motion based on the Fourth Amendment (R 27) to suppress certain seized evidence and an evidentiary hearing on the motion was conducted.

At the evidentiary hearing held before Detroit Recorder's Court Judge George W. Crockett, Jr., the testimony and argument of counsel revealed that the defendants allegedly had been observed by police

officers selling heroin to various individuals (R 5-6, 11-12, 23-24). According to the preliminary examination testimony of the police officers involved and the defendants' recitation of facts in their motion to suppress (R 4-5), the defendants were observed by the police who were using high-powered binoculars (R 10). When automobiles approached, the defendants talked with the vehicles' occupants and money exchanged hands (R 11, 23). One of the defendants, Mattie James, then disappeared between two houses and returned with a small packet which was given to the occupants of the car (R 11, 23).

At that time the officers changed their observation position and continued watching (R 11, 23). The officers then indicated that they observed the defendants procuring the packets from a brown bag secreted in some bushes (R 11, 24). The area where this activity took place is notorious for the sale and use of narcotics, and the officers, who were assigned to the narcotics detail, were familiar with the type of envelope used in the present case (R 11-12).

Through the testimony of defendant Mattie James and photographs, the defense attempted to show that the police officers' version of the events was factually impossible (R 24, 37-42, 47-53). During direct examination, defendant Mattie James indicated that she did not see any narcotics near her and did not see the police find any drugs (R 39). On cross-examination, Mattie James specifically stated that she did not have a brown paper bag (the item containing heroin which the officers seized) and did not have any powder confiscated that belonged to her (some packets of powder containing heroin were allegedly confiscated from defendant James' person (R 42).

After hearing this testimony and the arguments of the prosecutor regarding the defendants' lack of standing (R 62-63, 65), Judge Crockett, Jr. concluded that the defendants had standing, granted the motion to

suppress and dismissed the case as to both defendants (R 65, 64, 66). In making its ruling the court indicated "that [the] purpose [of the exclusionary rule] is not advanced by placing all sorts of technical requirements like standing in the way of bringing the issue before the Court" (R 63). Further, Judge Crockett, Jr. decided to "disregard all of the testimony of that police officer" on credibility grounds (R 64).

On appeal by the prosecution, the Michigan Court of Appeals affirmed Judge Crockett's decision citing, *inter alia*, Brown v United States, 411 US 223 (1973) and Jones v United States, 362 US 257 (1960) (see Appendix "A"). Subsequently, on the prosecution's application for leave to appeal, the Michigan Supreme Court refused to review the case (see Appendix "B").

#### REASONS FOR GRANTING THE WRIT

THE DECISION OF SIMMONS V UNITED STATES MAKES THE JONES V UNITED STATES "AUTOMATIC STANDING" RULE REGARDING SUPPRESSION OF EVIDENCE WHERE POSSESSION AT THE TIME OF THE SEARCH IS AN ESSENTIAL ELEMENT OF THE OFFENSE OBSOLETE SO THAT JONES V UNITED STATES SHOULD BE OVERRULED.

It is now well-settled in the area of search and seizure law that in order to advance a motion to suppress illegally seized evidence a defendant must establish standing to object to the alleged unlawful intrusion. Brown v United States, 411 US 223 (1973); Simmons v United States, 390 US 377 (1968); Jones v United States, 362 US 257 (1960). The thrust of the rule is that only those persons whose personal fourth amendment rights have been violated may move to suppress illegally seized evidence. Brown v United States, *supra*; Alderman v United States, 394 US 165 (1969).

In Jones, this Court accorded standing to a defendant charged with criminal possession of an item in order to permit him to contest its admissibility in a motion to suppress. 362 US at 263-265. The Court's holding came to be known as the "automatic standing" rule. The purpose of the rule was to prevent the defendant from being required to choose one horn of the dilemma facing him. As Justice Frankfurter noted in Jones:

Since narcotics charges. . . may be established through proof solely of possession of narcotics, a defendant seeking to comply with what has been the conventional standing requirement has been forced to allege facts the proof of which would tend, if indeed not be sufficient, to convict him.

...

The dilemma that has thus been created for defendants in cases like this has been pointedly put by Judge Learned Hand:

Men may wince at admitting that they were the owners, or in possession, of contraband property; may wish at once to secure the remedies of a possessor, and avoid the perils of the part, but equivocation will not serve. If they come as victims, they must take on that role, with enough detail to cast them without question. The petitioners at bar shrank from that predicament; but they were obliged to choose one horn of the dilemma (citation omitted). 362 US at 262

In order to remove the problem of choosing which constitutional right to exercise, the Jones Court decided to grant automatic standing in cases where possession at the time of the search is an essential element of the crime. In that way defendants are not required to establish standing by admitting possession of the contraband, thus establishing their guilt of the crime charged.

The question of standing to raise a motion to suppress was considered again by this Court in Simmons v. United States, supra. In Simmons defendant Garrett challenged the search of premises owned by a friend and the resulting seizure of a suitcase. Garrett, in order to establish standing, testified during an evidentiary hearing that the suitcase "was similar to one he had owned, and that he was the owner of the clothing found inside the suitcase." 390 US at 381. Garrett and Simmons were charged with armed robbery and Garrett's testimony at the evidentiary hearing was subsequently introduced by the prosecution as substantive evidence of his guilt.

The Simmons Court also considered the dilemma facing defendants who were forced to establish standing in cases involving non-possessory crimes. In arriving at its decision concerning how to alleviate the problem faced by persons trying to establish standing, this Court made the following announcement.

Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, waive his Fifth Amendment privilege against self-incrimination. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another. We therefore hold that when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection.

390 US at 394.

It seems clear, based upon the Simmons holding, that the dilemma defendants faced which was central to the creation of the Jones automatic standing rule has been removed. Therefore, a defendant charged with criminal

possession should not be granted automatic standing. Rather, such defendants should be required to establish standing in the same manner as any other defendant. This argument was presented to the First, Second, Fourth, Fifth and Seventh Circuits after Simmons. United States v Price, 447 F2d 23 (2nd Cir 1971); United States v Cobb, 432 F2d 716 (4th Cir 1970); United States v Allsenberrie, 424 F2d 1209 (7th Cir 1970); Gilson v United States, 406 F2d 423 (5th Cir 1969); Niro v United States, 388 F2d 535 (1st Cir 1968). However, none of those Circuits chose to view Simmons as inferentially overruling Jones and rejected the theory that the unfairness which served as the basis for the Jones decision was removed.

In Brown v United States, 411 US 223 (1973) this Court once more reviewed the bases for and rationale of Jones. After reciting the history and reasoning behind Jones, Chief Justice Burger, writing for the Court, observed:

The self-incrimination dilemma, so central to the Jones decision, can no longer occur under the prevailing interpretation of the constitution. Subsequent to Jones, in Simmons v United States, supra, we held that a prosecutor may not use against a defendant at trial any testimony given by that defendant at a pretrial hearing to establish standing to move to suppress evidence. . . . But it is not necessary for us now to determine whether our decision in Simmons, supra, makes Jones' "automatic" standing unnecessary. We reserve that question for a case where possession at the time of the contested search and seizure is "an essential element of the offense. . . charged."  
411 US at 228.

Later, the Court stated:

Again, we do not decide that this vice of prose-

cutorial self-contradiction warrants the continued survival of Jones' "automatic" standing now that our decision in Simmons has removed the danger of coerced self-incrimination. We simply see no reason to afford such "automatic" standing where, as here, there was no risk to a defendant either of self-incrimination or prosecutorial self-contradiction.  
411 US at 229.

Since Brown, several circuits have had occasion to deal with the "automatic standing" rule and have reached somewhat divergent and confusing results. In United States v Delguyd, 542 F2d 346 (6th Cir 1976), the Sixth Circuit Court of Appeals indicated that Simmons had eliminated the necessity for the Jones "automatic standing" rule. 542 F2d at 350. However, the court seemed to think it important that the Jones rule was still viable in cases where possession is an essential element of the crime charged. 542 F2d at 350 n 2. Other Circuits have flatly refused to consider Simmons as overruling Jones even in the post-Brown era. See, e.g., United States v Abascal, 564 F2d 821 (9th Cir 1977); United States v Barber, 557 F2d 628 (8th Cir 1977). The Fifth Circuit now seems to be in somewhat of a quandary regarding whether automatic standing should be granted to a defendant charged with a crime where possession is an essential element of the offense. Compare United States v Archbold-Newball, 554 F2d 665 (5th Cir 1977); United States v Hunt, 505 F2d 931 (5th Cir 1974) and United States v Holmes, 521 F2d 859 (5th Cir 1975) with United States v Holmes (On Rehearing En Banc), 537 F2d 227 (5th Cir 1976) and United States v Edwards, 554 F2d 1331 (5th Cir 1977), Rehearing En Banc Granted August 24, 1977.

In the instant case defendants were charged with possession of heroin with intent to deliver. The heroin possessed at the time of the search and arrest served as the basis for the charge. During the motion to suppress, defendant James testified that the police who seized

the bag of heroin and packets of heroin did not "confiscate any powder that belonged to [her]" (R 42). The defendant also testified that she "had no brown bags of any kind" (R 42). The clear import of Mattie James' testimony was that she alleged no possessory interest whatsoever in the brown paper bag containing heroin that was seized by police. The defendant also indicated that no packets of powder containing heroin were confiscated from her person. Despite this unequivocal disclaimer of a possessory interest in the seized items, Judge Crockett, Jr. ruled that the defendants had standing (R 63, 65). The judge also chose to disbelieve the police officers' version of the events (R 64). In essence, a question of fact regarding possession which should have been decided at trial was raised by the conflicting testimony.

Finally, the problem of prosecutorial self-contradiction is not raised in the present case. Throughout the proceedings the People have contended that the defendants possessed a controlled substance illegally. The defendants, however, have denied any possession, thus bringing into question the court's decision to grant standing to them in order to suppress the evidence. If, according to defendant James, none of her property was seized from her person nor taken from her possession, on what basis can the alleged evidence against her be suppressed. Even if there was an unlawful search conducted by the Detroit Police, Mattie James contends that there was no fruit of the search. Thus, there is nothing to be suppressed. In this case it appears that the self-contradiction is being practiced by the defendants rather than the prosecution. The dilemma posed by the facts of this case clearly demonstrates why, in light of Simmons, the "automatic standing" rule of Jones is obsolete and should be overruled.

## II

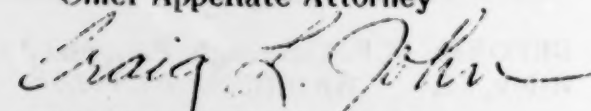
### CONCLUSION

It is respectfully submitted that for the reasons outlined above, substantial federal questions are presented such that plenary review should be granted.

Respectfully submitted,

WILLIAM L. CAHALAN  
Prosecuting Attorney  
Wayne County  
State of Michigan

EDWARD REILLY WILSON  
Chief Appellate Attorney

  
CRAIG L. JOHN (P-27146)  
Assistant Prosecuting Attorney  
12th Floor, 1441 St. Antoine  
Detroit, Michigan 48226  
Phone: (313) 224-5760

CLJ:do

Dated: July 10, 1978.

## APPENDIX "A"

## OPINION OF THE MICHIGAN COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

February 1, 1978

No. 77-182

MATTIE BURNEY JAMES and  
CHARLES HEADEN STEELE,

Defendants-Appellees.

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BEFORE: M.F. Cavanagh, P.J., and J.H. Gillis and D.C. Riley, JJ.

## MEMORANDUM OPINION

Evidence was suppressed and charges against defendants were dismissed following an evidentiary hearing in the trial court. The prosecutor appeals.

An examination of the record and briefs discloses no clear error.

Affirmed on the basis of Brown v United States, 411 US 223; 93 S Ct 1565; 36 L Ed 2d 208 (1973), Jones v United States, 362 US 257; 80 S Ct 725; 4 L Ed 2d 697 (1960), People v Ray Jackson, 71 Mich App 487; 247 NW2d 382 (1976).

## APPENDIX "B"

## ORDER OF THE MICHIGAN SUPREME COURT

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 3rd day of May in the year of our Lord one thousand nine hundred and seventy-eight.

Present: The Honorable Thomas Giles Kavanagh, Chief Justice, G. Mennen Williams, Charles L. Levin, Mary S. Coleman, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., Associate Justices.

CR 22-333

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

61023

COA 77-182  
LC 76-05299

MATTIE BURNEY JAMES, and  
CHARLES HEADEN STEELE,

Defendants-Appellees.

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On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court.

State of Michigan -- ss.

I, Harold Hong, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the

same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 4th day of May in the year of our Lord one thousand nine hundred and seventy-eight.

/s/ Corbin Davis  
Deputy Clerk.